

SERVED: December 18, 1996

NTSB Order No. EA-4506

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of December, 1996

_____)	
LINDA HALL DASCHLE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14363RO
v.)	
)	
JIMMIE DALE HELMS,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the decisions of Administrative Law Judge William R. Mullins, issued on March 14 and April 8, 1996.¹ The law judge granted the Administrator's motion for summary judgment, affirming an order of the Administrator revoking respondent's private pilot certificate, on finding that

¹The two decisions are attached.

respondent had violated 14 C.F.R. 61.15(a)(2).² We deny the appeal.

The Administrator's complaint and order of revocation alleged that, in 1993, respondent was convicted in United States District Court of distribution of more than 1,000 kilos of marijuana, conspiracy to possess with intent to distribute marijuana, and conspiracy to launder monetary instruments. He is now serving a jail term of in excess of 15 years for these offenses.

Respondent's answer admitted his convictions. However, in numerous pleadings filed prior and subsequent to his answer, he has raised various issues, which he incorporates in the petition presently before us. In brief, respondent argues that the Double Jeopardy clause prohibits this action against him, that the law judge somehow erred in, among other things, ruling on the Administrator's motion for summary judgment before ruling on respondent's motion to dismiss, that the Administrator's order should be dismissed because the convictions will soon be overturned and because he always exercised care and judgment as

² Section 61.15(a)(2) provides:

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

(2) Suspension or revocation of any certificate or rating issued under this part.

an airman.³

We see no error in the law judge's decisions or procedure. The Administrator's motion followed from well-established Board precedent. In support of his decision, the law judge cited Administrator v. Piro, NTSB Order No. EA-4049 (1993), where we said:

The Board has repeatedly expressed the view that revocation should be upheld on charges under section 61.15 without regard to aircraft involvement if the drug offense underlying the charge is serious enough to draw into question the airman's qualification to hold a certificate. . . . In our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

Id. at 3-4.

The facts here fit squarely within Piro. The circumstances of respondent's criminal conviction support a finding that respondent lacks the qualifications required of holders of airman certificates. Respondent's Constitutional and procedural arguments do not warrant otherwise. His Constitutional argument has been repeatedly rejected by this Board, as we have found that these proceedings are civil, and remedial in nature, not subject to the Double Jeopardy clause. See Administrator v. Zukas, NTSB

³ Respondent asks that we consider the entire record in ruling on his petition. We have done so.

Order No. EA-4464 (1996), and Administrator v. Beauchemin, NTSB Order No. EA-4371 (1995), and cases cited there. In view of the lack of disputed issues of fact, and the established precedent, the law judge did not abuse his discretion when he proceeded to rule on the Administrator's motion, filed prior to respondent's motion to dismiss.⁴ Finally, the better result from a safety policy perspective is to reconsider the revocation action if, in fact, respondent's conviction is overturned, not to postpone it based on a respondent's expectation. Accord Administrator v. Butchkosky, NTSB Order No. EA-4459 (1996).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman certificate shall begin 30 days from the date of service of this order.⁵

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴ It is clear that the law judge also chose to consider respondent's answer, filed late, as well as his numerous pleadings. Although we recognize that respondent may be dissatisfied with our precedent and its application to him to limit what he may consider to be his right to a hearing, we see absolutely no indication that respondent received other than a full and fair hearing in the facts of this case.

⁵ For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to 14 C.F.R. 61.19(f).